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September 15, 2005

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554

In the Matter of:
IP-Enabled Services
WC Docket No. 04-36
E911 Requirements for IP-Enabled
Service Providers
WC Docket No. 05-196

Dear Ms. Dortch:

Enclosed for filing please find Opposition of the National Association of State Utility Consumer Advocates to the Joint Petition for Clarification of the National Emergency Number Association and the Voice on Net (VON) Coalition in the above-referenced matter.

Please feel free to contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks
Assistant Consumer Advocate

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 04-36
IP-Enabled Services)	
)	WC Docket No. 05-196
E911 Requirements for IP-Enabled Service)	
Providers)	

**OPPOSITION OF THE NATIONAL ASSOCIATION OF STATE UTILITY
CONSUMER ADVOCATES TO THE JOINT PETITION FOR CLARIFICATION
OF THE NATIONAL EMERGENCY NUMBER ASSOCIATION AND THE
VOICE ON NET (VON) COALITION**

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I. INTRODUCTION

On June 3, 2005 the Federal Communications Commission (“Commission” or “FCC”) released its order (“June 3 Order”) requiring interconnected Voice over Internet Protocol (“VoIP”) providers to make enhanced 9-1-1 (“E9-1-1”) services available to their customers within 120 days of the publication of the order in the Federal Register and requiring such providers to certify that they have done so.¹ The Commission concurrently issued a notice of proposed rulemaking (“NPRM” or “Notice”) requesting comments on a range of issues relating to E9-1-1 service availability to the customers of VoIP providers (“E9-1-1 VoIP”).

On July 29, 2005, the National Emergency Number Association (“NENA”) and the Voice On Net Coalition (“VON”) filed with the Secretary a Joint Petition (“Petition”) seeking clarification of various aspects of the NPRM.² The National Association of State

¹ See *First Report and Order and Notice of Proposed Rulemaking*, FCC 05-116, 20 FCC Rcd 10245 (June 3, 2005) (“Order”), ¶ 1. The Order was published in the Federal Register on June, 29, 2005. 70 Fed. Reg. 37,273 (June 29, 2005). In the Order, the Commission describes E9-1-1 service in conjunction with the various equipment and providers involved in provisioning E9-1-1 service:

In a typical implementation, the Wireline E911 Network includes the Selective Router, which receives 911 calls from competitive and incumbent LEC central offices over dedicated trunks. The Selective Router, after querying an incumbent LEC-maintained Selective Router Database (SRDB) to determine which PSAP serves the caller’s geographic area, forwards the calls to the PSAP that has been designated to serve the caller’s area, along with the caller’s phone number (ANI). The PSAP then forwards the caller’s ANI to an incumbent LEC maintained Automatic Location Information database (ALI Database), which returns the caller’s physical address (that has previously been verified by comparison to a separate database known as the Master Street Address Guide (MSAG)). The Wireline E911 Network thus consists of: the Selective Router; the trunk line(s) between the Selective Router and the PSAP; the ALI Database; the SRDB; the trunk line(s) between the ALI database and the PSAP; and the MSAG.

Notice at ¶ 15. Although the Order does not require interconnected VoIP service providers to provision E9-1-1 via any particular technology, the Order does require interconnected VoIP providers to provision this type of E9-1-1 functionality to consumers by the required date.

² *In the Matter of IP-Enabled Services, E911 Requirements for IP Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, Joint Petition For Clarification Of The National Emergency Number Association And The Voice On Net (VON) Coalition (July 29, 2005).

Utility Consumer Advocates (“NASUCA”)³ now responds to that portion of the Joint Petition asking the Commission to allow private contracts to limit interconnected VoIP voice service provider E9-1-1 obligations.⁴

NASUCA applauds the Commission for its timely and decisive action in the June 3 Order. Access to adequate 9-1-1 emergency services is vital to public safety and welfare throughout the United States. The June 3 Order is an important step in ensuring that all citizens have access to critical emergency services via dialing 9-1-1 on all telephones. NASUCA looks forward to working with the Commission, VoIP service providers, the states, and with emergency services providers to bring about this important national priority in a timely and effective manner.⁵ NASUCA submits that the Commission should not reduce the reach or effectiveness of the June 3 Order by allowing interconnected VoIP providers to contract around the emergency service dialing obligations the Commission now seeks to impose.

II. THE COMMISSION SHOULD NOT ALLOW INTERCONNECTED VOIP VOICE SERVICE PROVIDERS TO LIMIT THEIR E9-1-1 OBLIGATIONS THROUGH PRIVATE CONTRACTS.

In the Petition, VON requests that the Commission relieve interconnected VoIP voice services providers of certain E9-1-1 obligations when those providers limit the

³ NASUCA is a voluntary, national association of 44 consumer advocates in 41 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

⁴ Petition at 8.

⁵ This would include participating on the Commission’s recently-announced E9-1-1 task force. News Release, FCC, *FCC Announces Joint Federal/State VoIP Enhanced 911 Enforcement Task Force* (July 25, 2005) (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260150A1.doc).

location from which their services may be used by contract.⁶ NASUCA points out that the Petition makes clear that NENA has no position on this issue.⁷ Thus, NASUCA understands this to be a request on the part of VON. Specifically, VON requests as follows:

The VON Coalition requests that the Commission clarify that when the express terms of consumer's contract with a VoIP provider only allow the consumer to utilize that service from a single location, the provider has no obligation to provide E9-1-1 service at any other location. Stated differently, the consumer would be contractually prohibited from using the VoIP service from anywhere other than the single, base location. The consumer essentially would have a single registered location and all 9-1-1 calls from that registered location would be delivered pursuant to the *Order's* requirements.

The VON Coalition anticipates that such contractual limits will be utilized in two scenarios. The first situation involves enterprise services that restrict employees use of the CPE to the work location. As is the case currently with traditional PBX phones, there is no consumer expectation that such phones can be utilized outside the office for 9-1-1 or other calls. The second situation involves local or regional Interconnected VoIP providers that would limit E9-1-1 service to a particular locality and region. In this second example, the local or regional VoIP provider would, at least initially, deploy E9-1-1 service to their particular locality or region before allocating resources to provide such service nationally. Users would have E9-1-1 service within that locality or region, but not outside the locality or region. In both cases, the enterprise customer or the local or regional VoIP service provider would of course comply with the *Order's* notification and labeling requirements. Indeed, the express contract provision essentially would be an additional notification or warning to the consumer.

Allowing Interconnected VoIP providers to include contractual limitations in the aforementioned circumstances would support public safety by limiting the use of the VoIP service to the exact location where E9-1-1 is available. Accordingly, the VON Coalition asks that the Commission clarify that a VoIP service provider offering service in this manner (1) is not providing a service "that can be utilized from more than one physical location," *Order* ¶ 46; (2) need not provide a consumer with a way to change or update their registered location; and (3) does not need to provide E-9-1-1 to that consumer/employee to any physical location other than the single registered location specified by the contract.

Petition at 8-10. Thus, VON asks the Commission to recognize the fiction that

⁶ Petition at 8.

contractual limitations alone may prevent services from being utilized in more than one location, and that this may excuse providers from full compliance with the June 3 Order if they employ such contractual language. This request runs counter not only to the spirit of the June 3 Order, but also to the letter of the Order as well.⁸ NASUCA submits that the Commission should deny VON's request, as granting this request will not serve the public interest.

NASUCA submits that interconnected VoIP services providers should not escape their 9-1-1 obligations under the June 3 Order via a form of regulatory arbitrage by contract. Indeed, VoIP provider's attempts to do that very thing triggered the need for this proceeding in the first instance, e.g. consumers purchased VoIP telephone service without noticing that in many instances the contractual fine print provided that the service did not include a workable form of E9-1-1. The Commission should not condone or support any expectation that fine print buried on a webpage or on the reverse of a contract form will serve to relieve an interconnected voice services provider from some or all of its 9-1-1 obligations. VON's proposal to create such an exception is nothing more than a request to continue in a business-as-usual manner; such an exception may swallow the Commission's new E9-1-1 rules.

The situations described by VON above do not justify the requested exemptions from the requirements of the June 3 Order. In the first example, VON claims that there is no consumer expectation that one may utilize an enterprise-based phone "outside the office for 9-1-1 or other calls" Petition at 9. This begs the question; there is no expectation to use a standard circuit switched PBX phone in this manner *because it will*

⁷ Id. fn. 6.

not work when detached from the PBX switch. Such assumptions would not apply to interconnected VoIP voice services telephones *because they may work* when removed from the workplace. It is not difficult to imagine that an employee may well use an IP phone outside the workplace if doing so would save money or assist in completing a project on time when away from the home office.

VON's second scenario is even more troubling than the first. There, it describes a "regional" interconnected VoIP service provider that need not provide E9-1-1 service "outside the locality or region." Petition at 9. Thus, VON implicitly recognizes that the phone may travel within region. VON is unclear, however, how a subscriber to such a service is to know the boundaries of their E9-1-1 region, or even how such "regions" are to be established. This scenario is indeed dangerous since it encourages providers to market nomadic use of their interconnected VoIP services without the assurance that E9-1-1 services will work according to current consumer expectations.⁹

Moreover, NASUCA is also concerned about the continued use of the equipment after the restrictive contract has expired. Even where contractual geographic limitations are scrupulously obeyed, such contracts will certainly expire at some point. After the restrictive contract has expired, the equipment may still be usable and incapable of notifying the PSAP of its new location once it has been moved. Thus, the equipment would likely still fail to report its accurate location once it has been reused post-contract.

⁸ June 3 Order at ¶ 36-51. In this section of the Order, the Commission provides that public safety requires strict compliance with the order. *Id.* at ¶ 51. NASUCA submits that this consideration should feature first in the Commission's decision making in this matter.

⁹ VON offers no assurance that such VoIP equipment would not be capable of being used outside of the designated location regardless of the contractual terms. Service contracts alone cannot render full assurance that users of the VoIP equipment could not use a VoIP telephone out of its contractual location if such operation can be technically accomplished.

The examples offered by VON simply do not acknowledge that the services for which they seek exemptions may be highly mobile regardless of the fine print used to limit that mobility. In addition, the Commission should recognize that the type of agreements proposed by VON do not reach beyond providing notice to the contracting parties. The June 3 Order protects the public at large – the husbands, wives, children, relatives, friends, neighbors, employees, etc. that may not realize that 9-1-1 emergency services are not available on what otherwise appears to be an ordinary telephone. The Commission should do all in its power to avoid, and not create, tragedies surrounding the adoption of interconnected VoIP services among members of the public.

IV. CONCLUSION

NASUCA supports the FCC's effort to have VoIP service providers ensure that consumer have access to E9-1-1 emergency services dialing. To that end, and for all the reasons discussed above, NASUCA further submits that the FCC should deny the Joint Petition For Clarification Of The National Emergency Number Association And The Voice On The Net (VON) Coalition as to the matters discussed above. Only by doing so will the public health, safety, and welfare be protected.

Respectfully submitted,

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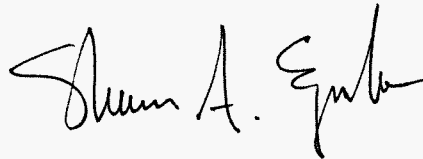
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IP-Enabled Services	:	WC Docket No. 04-36
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	:	

I hereby certify that I have this day served a true copy of the foregoing document, Opposition of the National Association of State Utility Consumer Advocates to the Joint Petition for Clarification of the National Emergency Number Association and the Voice on Net (VON) Coalition, upon parties of record in this proceeding.

Dated this 15th day of September, 2005.

Respectfully submitted,



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